

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 978 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI and

MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

MAGANBHAI M PATEL

Versus

SPECIAL LAND ACQ.,

Appearance:

MR JN PATEL for Petitioner

MR RC KODEKAR, AGP for Respondent No. 1

CORAM : MR.JUSTICE M.H.KADRI and

MR.JUSTICE J.R.VORA

Date of decision: 27/09/1999

ORAL JUDGEMENT : [Per: Kadri, J.]

1. The appellant, who is the original claimant, has filed this First Appeal under Section 54 of the Land Acquisition Act (hereinafter referred to as the "Act)

read with Section 96 of the Code of Civil Procedure, challenging the judgment and award dated April 8, 1981, passed by the learned 2nd Extra Assistant Judge, Vadodara, in Land Reference Case No. 46 of 1976, whereby

the learned 2nd Extra Assistant Judge, dismissed the claim petition filed under Section 18 of the Act by the Appellant for enhancement of compensation before the District Court.

2. The appellant had purchased the acquired land bearing Survey No.77, admeasuring 30635 sq. feet, situated in Alkapuri area, Vadodara, on 21.1.1969 by sale deed - Exhibit 19. The Divisional Engineer, Telecom, Vadodara Division, requested by his Letter No.B.10/13 to the Collector, Vadodara, to acquire land of Survey No.77 to construct a telephone exchange building. The said proposal was forwarded by the Collector, Vadodara, to the Government. After scrutiny of the proposal, Notification under Section 4(1) of the Act was published in the Government Gazette on June 11, 1970, to acquire the land of Survey No.77 for the construction of telephone exchange building. The persons interested of the acquired land, filed their objections before the Land Acquisition Officer. The Land Acquisition Officer after considering the objections, submitted his report under Sec. 5-A(2) of the Act. After considering the report of the Land Acquisition Officer submitted under Section 5-A(2) of the Act, the State Government issued Notification under Section 6 of the Act, which was published in the Government Gazette on July 29, 1972. Individual Notices were issued to the persons interested in the land under Section 9(3)-(4) of the Act. The owner of the acquired land i.e. the appellant, claimed

compensation of the acquired land before the Land Acquisition Officer at the rate of Rs.12/- per sq.foot. The Land Acquisition Officer on the basis of the material produced before him, made his award on June 29, 1976 and offered compensation at the rate of Rs. 6.00 per sq. foot for the lands admeasuring 2840 sq. feet and rest of the 11,000 sq.feet lands at the rate of Rs.5.58 per sq. foot.

3. The appellant was of the opinion that looking to the situation and the rise in price in Alkapuri area, Baroda city where the acquired lands were situated, the

compensation offered by the Land Acquisition Officer was inadequate and, therefore, he filed a written application under Section 18 of the Act to the Land Acquisition Officer requiring him to refer the application to the District Court for enhancement of compensation and for determination of the market price of the acquired land. The said application was referred to the District Court by the Land Acquisition Officer, which came to be numbered as Land Acquisition Reference Case No. 46 of 1976. The appellant before the Reference Court claimed compensation of the acquired land at the rate of Rs.12/per sq. foot. According to the claimant, the acquired lands were sold to him by its owner deceased Manilal Bodaji at lower rate due to the relations between them. It was pleaded that the Land Acquisition Officer had underestimated the market value of the lands under acquisition because the acquired lands were situated in Alkapuri area of Baroda City, where Industrialists,

Doctors, Mill Owners and Advocates were residing. It was claimed that there were 5 star hotels located in the area. It was further claimed that Alkapuri area is the richest locality in Baroda City and price of the lands were increasing day-by-day.

4. The respondent filed its reply at Exhibit 10, inter alia, contending that the compensation offered by the Land Acquisition Officer was just and adequate and, therefore, the claim petition was not tenable. That the Land Acquisition Officer had taken into consideration all the comparable data before determining the market price of the acquired land and that the claimant had not made out any ground for enhancement of compensation, the claim petition be dismissed with costs.

5. On the pleading of the parties, the Reference Court framed issues at Exhibit 12. The appellant to substantiate his claim of enhancing the compensation, examined himself at Exhibit 18; and one Ushaben Ravjibhai Patel at Exhibit 26. During her oral deposition, Ushaben Ravjibhai Patel produced a Sale Deed dated 12.2.1965 in respect of survey No. 503 at Exhibit - 27. The appellant also examined Vithalbhai Purshottamdam Patel at Exhibit 28, who produced a Sale Deed dated 31.3.1971 in respect of Survey No. 65/2 at Exhibit 29. The claimant also examined one Rashmikant Bhikhabhai Patel at Exhibit 31, who had remained as intermediaries in the transaction of the acquired lands, which had taken place between the appellant and the deceased Manilal Bodaji. The claimant

produced documentary evidence consisting of map showing the situation of the land at Exhibit 20. The respondent neither examined any witness nor produced any documentary evidence before the Reference Court.

6. The Reference Court after considering the oral evidence and the sale deeds produced at Exhibits 19, 27, and 29 deduced that for determination of the market price of the acquired land, the best evidence was the sale deed at Exhibit 19, which related to the very acquired land, which was entered into between the appellant and the deceased Manilal Bodaji in January 1969 and which reflected the market price of the land at Rs.5.38 per sq.foot. The Reference court further deduced that the sale deed - Exhibit 27, which was in respect of the land of Survey No. 503, was very near to the Railway Station; and Race Course Circle was about one and half to 2 kms. whereas acquired lands were situated away from the land of survey No.503 and, therefore, it was not comparable with the acquired lands. The Reference Court concluded that sale deed - Exh. 30, which was in respect of Survey No. 27 was not proved as no witness was examined to prove the contents of the sale deed. The Reference Court further concluded that the sale instances led by the appellant at Exhibits 27 and 29 were in respect of small plots of land, whereas the acquired lands was having large area and, therefore, they were not comparable. On the basis of the above referred to conclusions the Reference Court dismissed the claim petition, which has given rise to the filing of the present appeal by the appellant original claimant.

7. Learned counsel Mr.J.M. Patel for the appellant has vehemently submitted that the Reference Court erred in not relying on the Sale Deed dated February 12, 1965 Exhibit 27, which reflected the market price of land of Survey No. 503 at Rs. 8.37 paise per Sq. foot. It is further submitted that the Reference Court also erred in not relying on the sale deed - Exhibit 29 dated March 31, 1971 in respect of Survey No. 65/2, which reflected the market price at the rate of Rs. 9.50 per sq. foot. It is pleaded that the sale deeds - Exhibits 27 and 29 reflected the trend in rise of price of the land in the area of Alkapuri, Vadodara, had gone high. It is next submitted by the learned counsel for the appellant that the sale deed Exhibit 19 of the very acquired land was entered on January 22, 1969 at the rate of Rs. 5.38 paise per sq.foot. However, it is submitted by the learned counsel for the appellant that the appellant and deceased Manilal Bodaji had orally agreed the price of

the acquired land at Rs.5.38 paise per sq.foot before one year of the sale transaction. In this connection, the learned counsel pleaded that as per the evidence of the appellant himself, which is supported by the evidence of Rashmikant Bhikhabhai Patel - Exhibit 31 indicates that this price was arrived at between the appellant and the deceased Manilal Bodaji at the rate of Rs. 5.38 paise per sq. foot in the year 1968, whereas the Notification under Section 4(1) of the Act was issued on June 11, 1970, and therefore, there was a gap of two years, the Reference Court ought to have given the rise in price, even if, reliance was placed on Sale Deed dated 22.1.1979

at Exhibit-19, which was in respect of the very acquired land. It is stressed by the learned counsel for the appellant that the appellant had claimed a reasonable compensation at the rate of Rs.12 per sq.foot looking to the rise in price in the locality of Alkapuri, Vadodara, which is a highly prestigious and posh locality and there was heavy pressure on the land of that locality. Lastly, it is contended by the learned counsel for the appellant that the appellant has lost a prestigious land in the acquisition and, therefore, he should be adequately compensated and the appeal should be allowed by awarding adequate compensation to the appellant.

8. Learned Assistant Government Pleader Mr. R.C. Kodekar has contended that the Reference Court had taken into consideration all the relevant aspects and the sale deeds, and had rightly dismissed the claim petition filed by the original claimant. It is contended that the Land Acquisition Officer had offered a reasonable compensation to the appellant and, therefore, this Appeal should be dismissed. It is alternatively argued by the learned Assistant Government Pleader that as per the decision of the Apex Court reported in AIR 1997 SC 2625, the best piece of sale transaction is the sale deed - Exhibit 19 with respect to the acquired land and the Reference Court had rightly rejected the claim petition by relying on the same sale deed - Exhibit 19 and, therefore, this Appeal be dismissed with costs.

9. Before the Reference Court, the claimant had produced sale deed dated 12.2.1965 - Exhibit 27 with respect to Survey No. 503, admeasuring 5850 sq. feet. It may be stated that the sale deed - Exhibit 29 was in respect of a small piece of land as compared to the

acquired land. Moreover, the sale deed Exhibit - 27 was executed in the year 1965, whereas the Notification of the acquired land was issued in June, 1970 and, therefore, the Reference Court had rightly rejected the sale deed at Exhibit 27 on the ground that it was in respect of a small piece of land and there was a gap of five years between the execution of the sale deed and the issuance of the Notification under Section 4(1) of the Act. The sale deed - Exhibit-29, relied on by the claimant dated March 31, 1971 was in respect of Survey No. 65/2 of plot No. 6, admeasuring 5070 sq.feet, which reflected the market price at the rate of Rs. 9.50 per sq. foot. This sale transaction has been proved by the witness Vithalbhai Purshottambhai at Exhibit 28. This witness was the owner of Survey No. 65/2. He deposed that there was a construction on the land of Survey No. 65/2 upto plinth level and the same was sold at the market rate prevailing in the year 1971. The sale deed Exhibit - 29 reflects the market rate prevailing in the month of March, 1971 at the rate of Rs.9.50 per sq. foot. Witness Vithalbhai Purshottambhai - Exhibit 28, who proved the sale deed - Exhibit 29, deposed that the acquired lands were better situated than the lands which were sold by the sale deed - Exh.29. However, the Reference Court rejected the evidence of the witness

Vithalbhai Purshottambhai - Exhibit 28, on the ground that he has deposed that the lands sold by him was inferior to the acquired lands, with a view to help the claimant. In our opinion, the rejection of the evidence by the Reference Court is unwarranted. The map showing the situation of the acquired lands and other surrounding lands was produced before the Reference Court at Exhibit 20. It indicates that the acquired lands bearing Survey No. 77, were situated on the cross roads, whereas land of Survey No.65/2 relating to sale deed Exhibit - 29, was situated at a distance, and was not having better situation compared to acquired lands of Survey No.77, though the lands of sale deed - Exhibit 29 was in respect of a small area of land admeasuring 5070 sq.feet. Therefore, it can be said to be not comparable with the acquired lands, but, it indicates that there was rise in price in the area of Alkapuri as well as Race Course Road. The evidence of the claimant's witnesses which also indicate that there was tremendous construction activities and development in the area, where the acquired lands were situated. Near the acquired lands, Five Star Hotels like Hotel Kaviraj and Express Hotels had come up and, therefore, it can be held that the acquired lands were situated in a posh locality having

builidng potentiality.

10. Learned counsel for the appellant has vehemently submitted that the Reference Court erred in not relying on the document at Exhibit - 29 for determination of the market price of the acquired lands. The submission of

learned counsel for the appellant deserves to be rejected. As stated earlier, the lands of Sale Deed Exhibit - 29 were of small area as compared to the acquired lands. However, it indicates that there was rise in price of the lands in Alkapuri locality. As per the decision of the Apex Court in the case of SPECIAL DEPUTY COLLECTOR vs. KURRA SAMBASIVA RAO reported in AIR 1997 SC 2625, in para 8 at page 2628, the Apex Court has held that the best evidence of the value of property is the sale transaction in respect of the acquired land to which the claimant himself is a party; the time at which the property comes to be sold; purpose for which it is sold; nature of the consideration; and the manner in which the transaction came to be brought out." Therefore, we cannot ignore the sale transaction - Exhibit 19, which was with regard to the acquired lands bearing Survey No.77, admeasuring 30,635 Sq.feet, which had taken place on January 22, 1969. As per the said transaction, the acquired lands were sold in January, 1969 at the rate of Rs.5.38 per sq. foot. As per the claimant and his witness - Rashmikanth Bhikhabhai Patel - Exhibit 31, the transaction between the claimant and the deceased Manilal Bodaji agreed with regard to the price of the acquired lands, which had taken place in the year 1968, and it was agreed between the vendor and vendee that the price of the acquired lands per Sq. foot would be Rs.5.38. It is apparently clear that as Manilal Bodaji was under treatment and was residing at Bombay, the sale deed could not be executed in the year 1968. Manilal Bodaji had recovered from his illness and had come to Baroda and the

sale deed was executed in January, 1969. It is also borne out of the evidence of Rashmikanth Bhikhabhai Patel - Exhibit 31 that Manilal Bodaji did not want to execute the agreement to sale deed, but wanted to sell the lands by executing a sale deed and taking the whole amount of consideration at the same time. Therefore, it is borne out that the price of Rs. 5.38 per sq. foot of the acquired lands was agreed between the claimant and the deceased Manilal Bodaji in 1968 i.e. prior to two years of the date of issuance of Notification under Section 4(1) of the Act. The sale transaction Exhibits 27 and 29

indicate that the price of the lands in the locality of Alkapuri and Race Course Road in Baroda City was increasing day-by-day by leaps and bounds. The evidences also indicate that there was heavy pressure on the lands of Alkapuri and Race Course Road area. Therefore, in our opinion, reasonable rise in price requires to be given to the price of Rs.5.38, which is rounded off Rs.5.50 as agreed between the claimant appellant and the deceased Manilal Bodaji in the year 1968. In our opinion, looking to the increase in the price of land in Alkapuri and Race Course Road area, and due to heavy pressure on the lands of the said locality and a rise of 20% per year can be adopted. Taking the price rise at 20% every year, just and adequate, market price of the acquired lands can be determined at Rs.8.00 per sq. foot as on June 11, 1970. The Land Acquisition Officer had awarded Rs.60 per Sq. meter of the acquired lands situated at the junction of two main roads having large frontage on road admeasuring 2840 sq. meter, and Rs. 50 per sq. meter of acquired

lands of old Padra road, when compared to its depth return frontage on Kacha private road of Haribhakti Colony to the South, admeasuring 1100 sq.meter. The Reference Court had rejected the reference application of the appellant by holding that the compensation offered by the Land Acquisition Officer was just and adequate. However, in view of the reasoning given by us, claimant would be entitled to receive compensation at the rate of Rs.72/- per sq. meter for the lands situated at the junction roads having large frontage on road, admeasuring 2840 sq. meter and Rs.60 per sq. meter for the lands situated on old Padra road having frontage on Katcha private road of Haribhakti Colony to the south admeasuring 1100 sq. meter. The claimant would be entitled to solatium at the rate of 15% on the additional amount of compensation as indicated above with interest at the rate of 6% from the date of taking over of the possession till realisation.

11. For the foregoing discussion, we hold that the claimant would be entitled to compensation at the rate of Rs.72/- per Sq. meter for the lands situated at the junction of two main roads having large frontage on road measuring 2840 sq. meter and for the rest of lands admeasuring 1100 sq. meter at the rate of Rs. 60/- per sq.meter for the lands situated on old Padra road having frontage on Katcha private road of Haribhakti Colony. The claimant would be entitled to solatium at the rate of 15% and interest at the rate of 6% per annum on the

additional amount of compensation from the date of taking over of the possession till realisation. The award is modified to the aforesaid extent only. The appeal is partly allowed with no order as to costs.

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